CRIMINAL LAW—EVIDENCE—CHARACTER.—PEOPLE v. PELSARZ, 78 N. E. 294 (N. Y.).—*Held,* where there was no evidence offered as to the character of defendant, accused of felony, he was not entitled to an instruction, that the presumption that his character was good must be considered by the jury.

The general rule in the United States and England is that in criminal cases there is a rebuttable presumption in favor of the prisoner's innocence. *Tweedy v. State,* 5 Iowa 433; *Horne v. State,* 1 Kan. 2. And the felon may always put witnesses in evidence to prove his general character. *Roscoe's Crim. Law Evidence,* 196. Until then the state cannot attack his character; nor even then, examine the defendant as to particular facts of his prior character. *State v. Tozier,* 49 Me. 404. However, when he does not offer evidence of his character, the law assumes that it is of ordinary fairness and the jury cannot assume that it be good or bad but must give a verdict solely on the evidence presented. *Danner v. State,* 54 Ala. 127; *State v. Kabrick,* 39 Ia. 277. So in this case, the prisoner's prior character is immaterial and the jury cannot assume that it is bad and thus infer that he is guilty of the crime charged. *Ackley v. People,* 9 Barb. 606; *State v. Dockstader,* 42 Ia. 436. His former good character offers no presumption of his innocence. *People v. Lee,* 81 Pa. 969; *People v. Griffith,* 146 Cal. 339. But where the prisoner's general character is in issue his character evidence may go to the jury though it be of little avail. *McKelvey on Evidence,* 153. It is sometimes held that if the act is of an atrocious nature such evidence is of no avail. *People v. Mead,* 50 Mich. 228. This doctrine is generally disapproved in United States. *McKelvey on Evidence,* 153. Moreover, in such cases, if there is doubt in the jury's mind, their verdict should be for the defendant. *U. S. v. Means,* 42 Fed. 599; *Walker v. State,* 136 Ind. 663.

DAMAGES—BREACH OF CONTRACT—ERROR IN LOCATING HOUSE.—OKEN v. HENDERSON, 99 N. Y. SUPP. 917.—*Held,* that where a contractor did not construct a house on the lines specified in the plans, the measure of damages was the difference between the value of the property as it was and as it would have been, if the house had been constructed according to contract. Hooper, J., *dissenting.*

The employer should have such deduction made from the contract price as will be equal to the difference between the value of the work agreed to be done and the work actually accomplished. *Luth on Damages,* Vol. II, p. 1611. In England, however, it was held that, what plaintiff is entitled to recover, is the price agreed upon in specifications subject to a deduction, the measure of which is the sum which it would take to make the work correspond to the specifications. *Thortnon v. Place,* 1 Mood & Rob. 218. Iowa follows this rule. *Smith v. Bristol,* 33 Iowa, 24. The latter rule is repudiated, however, in many American jurisdictions on the ground that its application would, in many cases, involve reconstruction as unreasonable and disproportionate expense and the dictum of this case is followed. *White v. MacLaren,* 151 Mass. 553; *Fagan v. Whitcomb,* 14 S. W. 1018 (Tex.); *Morton v. Harrison,* 52 N. Y. Super. Ct. (20 Janis & S.) 305.

EMINENT DOMAIN—USE OF HIGHWAY FOR TELEPHONE LINE—INJUNCTION.—HOBBS v. LONG DISTANCE TELEPHONE & TELEGRAPH CO., 41 SOUTHERN REP. 1003 (ALABAMA).—*Held,* that a telephone line along the margin of a highway is not an additional burden, entitling the abutting owner to compensation. Even if the abutting owner on a highway is entitled to compensa-